

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

ERIC LEON CHRISTIAN,

Defendant(s).

2:09-CR-303 JCM (VCF)

**ORDER**

This case is a classic example of a moot case. The defendant was tried and convicted by a jury and appealed that decision to the Ninth Circuit. While the appeal was pending, he completed his sentence and was also discharged from supervised release.

Once a defendant completes his sentence, his challenge to his conviction becomes moot, unless he will continue to suffer some collateral consequence. *See Caswell v. Calderon*, 363 F.3d 832, 836 (9<sup>th</sup> Cir. 2004). The mootness arises because he has already satisfied the penalty imposed for his conviction, and the appellate court cannot undo a period of incarceration.

The only collateral consequence for the defendant here was supervised release, which he had also completed. Significantly, the courts look for a collateral consequence for the criminal defendant, *See U.S. v. Palomba*, 182 F.3d 1121, at 1123 (9<sup>th</sup> Cir. 1999) not for some consequence or result for the government. Here, Christian's release from custody and from supervised release caused his appeal to become moot, because it no longer presented a case or controversy under Article

1 III, §2 of the Constitution. *See Spencer v. Kemna*, 523 U.S. 1, at 7, 118 S. Ct. 978, at 983 (1998).  
2 This case-or-controversy requirement exists through all trial and appellate proceedings in federal  
3 court. *Ibid*.

4 Prior to, or during the appellate argument, the AUSA failed to notify the panel of the  
5 defendant's status and that this case was now moot, and that the court accordingly lacked  
6 jurisdiction. Thus, the appellate court was never given the opportunity to address the issue of  
7 mootness or lack of jurisdiction.

8 The Ninth Circuit considered the merits of the appeal and reversed and remanded the case  
9 to the district court for further proceedings. On remand the AUSA admitted to the district judge that  
10 he had failed to notify the appellate court of the mootness issue; this court continued the matter for  
11 one week to give the AUSA the opportunity to determine how his office wished to proceed.

12 At that continued hearing the AUSA explained that his office wanted the district court to  
13 retry the defendant for the same crime for which he had previously been convicted and then sentence  
14 him again, this time for a sentence of time served. The prosecutor's rationale for this action was that  
15 the government wanted to place another felony on the defendant's record.

16 Although the government styles this as a "collateral consequence," the cases look to whether  
17 the appellant/defendant—not the government—will suffer a collateral consequence if the court  
18 dismisses his case for mootness. *See Caswell*, 363 F.3d at 836 *supra*.

19 Here the government is simply trying to take advantage of its own dereliction in failing to  
20 advise the appellate panel of the mootness of Christian's appeal. The district court declines to follow  
21 the government's suggestion, the effect of which would be to deprive the defendant of his appellate  
22 victory.

23 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this matter is dismissed as  
24 moot.

25 DATED July 1, 2014.

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28 UNITED STATES DISTRICT JUDGE